

REFERENCE TITLE: defensive driving school repeal

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2749

Introduced by
Representative Pearce

AN ACT

AMENDING SECTIONS 12-113, 12-114, 28-645, 28-647, 28-775, 28-3392, 28-3394, 28-3395, 28-3396, 28-3397 AND 28-3398, ARIZONA REVISED STATUTES; REPEALING SECTION 28-3393, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1997, CHAPTER 1, SECTION 217; REPEALING SECTION 28-3393, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 182, SECTION 1; REPEALING SECTION 28-3399, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 8, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 28-3399; CHANGING THE DESIGNATION OF TITLE 28, CHAPTER 8, ARTICLE 7, ARIZONA REVISED STATUTES, TO "COURT DIVERSION FEES"; RELATING TO COURT DIVERSION FEES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-113, Arizona Revised Statutes, is amended to
3 read:

4 12-113. Judicial collection enhancement fund: purpose:
5 administration: report: definition

6 A. A judicial collection enhancement fund is established consisting of
7 monies received from:

8 1. The time payment fee established in section 12-116.

9 2. The surcharge paid by a person attending a court ordered diversion
10 program pursuant to section 12-114.

11 3. Monies deposited in the fund pursuant to section 12-114.01, section
12 12-119.01, subsection B, paragraph 1, section 12-120.31, subsection D,
13 paragraph 1, section 12-284.03, subsection A, paragraph 7, section 22-281,
14 subsection C, paragraph 1 and section 22-404, subsection C, paragraph 1.

15 4. Electronic filing and access fees collected pursuant to sections
16 12-119.02 and 12-120.31.

17 B. Courts wishing to receive monies from the judicial collection
18 enhancement fund shall submit a plan to the supreme court. Subject to
19 legislative appropriation, the fund monies shall be used according to plans
20 approved by the supreme court to train court personnel, improve, maintain and
21 enhance the ability to collect and manage monies assessed or received by the
22 courts, including restitution, child support, fines and civil penalties, to
23 improve court automation, to improve case processing or the administration of
24 justice and for probation services.

25 C. The supreme court shall administer the fund and may expend monies
26 in the fund, subject to legislative appropriation, for local, regional or
27 statewide projects. The supreme court may directly provide or contract for
28 services consistent with the purposes of the fund. Monies from the fund
29 shall supplement monies already provided to local courts for purposes
30 consistent with the purposes of the fund.

31 D. By January 8 of each year, the supreme court shall report to the
32 governor and the legislature, for the prior fiscal year, the total monies
33 collected, the amount spent and for what purposes, including an exact
34 explanation of funds defined as administration of the fund, the amount
35 remaining in the fund and the number of employees who are paid from the fund
36 and their job descriptions. The report shall also detail the progress made
37 in improving the ability of the courts to collect monies.

38 E. On notice from the supreme court, the state treasurer shall invest
39 and divest monies in the fund as provided by section 35-313, and monies
40 earned from investment shall be credited to the fund.

41 F. After the court determines the amount due, the court shall transmit
42 to the county treasurer each month the fees collected pursuant to section
43 12-116, except that municipal courts shall transmit to the city treasurer
44 each month the fees so collected.

1 G. The county or city treasurer shall transmit to the state treasurer
2 on or before the fifteenth day of each month the fees collected pursuant to
3 subsection F of this section for deposit in the judicial collection
4 enhancement fund.

5 H. For the purposes of this article, "court authorized diversion
6 program" means a program in which an individual who is charged with a civil
7 or criminal traffic offense or any other criminal offense is not prosecuted
8 for the offense on the successful completion of an authorized diversion
9 program. ~~Successful completion of a defensive driving school program~~
10 ~~resulting in dismissal of a civil or criminal traffic offense is considered a~~
11 ~~court authorized diversion program under this section.~~

12 Sec. 2. Section 12-114, Arizona Revised Statutes, is amended to read:

13 12-114. Surcharge on court authorized diversion programs for
14 traffic offenses; deposit

15 A. If a court authorizes individuals charged with civil or criminal
16 traffic offenses to attend a court authorized diversion program, ~~including a~~
17 ~~defensive driving school program,~~ it shall require the assessment of a five
18 dollar surcharge on the fees charged by such court authorized diversion
19 programs.

20 B. A court or a court authorized diversion program shall collect the
21 five dollar surcharge and remit the surcharge to the supreme court which
22 shall deposit, pursuant to sections 35-146 and 35-147, the surcharge in the
23 judicial collection enhancement fund.

24 Sec. 3. Section 28-645, Arizona Revised Statutes, is amended to read:

25 28-645. Traffic control signal legend

26 A. If traffic is controlled by traffic control signals exhibiting
27 different colored lights or colored lighted arrows successively one at a time
28 or in combination, only the colors green, red and yellow shall be used,
29 except for special pedestrian signals carrying a word legend. The lights
30 shall indicate and apply to drivers of vehicles and pedestrians as follows:

31 1. Green indication:

32 (a) Vehicular traffic facing a green signal may proceed straight
33 through or turn right or left unless a sign at that place prohibits either
34 turn. Vehicular traffic, including vehicles turning right or left, shall
35 yield the right-of-way to other vehicles and to pedestrians lawfully within
36 the intersection or an adjacent crosswalk at the time the signal is
37 exhibited.

38 (b) Vehicular traffic facing a green arrow signal, shown alone or in
39 combination with another indication, may cautiously enter the intersection
40 only to make the movement indicated by such arrow or such other movement as
41 is permitted by other indications shown at the same time. Vehicular traffic
42 shall yield the right-of-way to pedestrians lawfully within an adjacent
43 crosswalk and to other traffic lawfully using the intersection.

44 (c) Unless otherwise directed by a pedestrian control signal as
45 provided in section 28-646, pedestrians facing any green signal, except if

1 the sole green signal is a turn arrow, may proceed across the roadway within
2 any marked or unmarked crosswalk.

3 2. Steady yellow indication:

4 (a) Vehicular traffic facing a steady yellow signal is warned by the
5 signal that the related green movement is being terminated or that a red
6 indication will be exhibited immediately thereafter when vehicular traffic
7 shall not enter the intersection.

8 (b) Unless otherwise directed by a pedestrian control signal as
9 provided in section 28-646, pedestrians facing a steady yellow signal are
10 advised by the signal that there is insufficient time to cross the roadway
11 before a red indication is shown and a pedestrian shall not then start to
12 cross the roadway.

13 3. Red indication:

14 (a) Except as provided in subdivisions (b) and (c) of this paragraph,
15 vehicular traffic facing a steady red signal alone shall stop before entering
16 the intersection and shall remain standing until an indication to proceed is
17 shown. On receipt of a record of judgment for a violation of this
18 subdivision or an act in another jurisdiction that if committed in this state
19 would be a violation of this section, the department shall order the person
20 to attend and successfully complete traffic survival school training and
21 educational sessions within sixty days after the department issues the order.
22 Notwithstanding section 28-3315, if the person fails to attend or
23 successfully complete traffic survival school training and educational
24 sessions, the department shall suspend the person's driving privilege
25 pursuant to section 28-3306 until the person attends and successfully
26 completes traffic survival school training and educational sessions. A
27 person whose driving privilege is suspended pursuant to this subdivision may
28 request a hearing. If the person requests a hearing, the department shall
29 conduct the hearing as prescribed in section 28-3306. A law enforcement
30 officer or a jurisdiction issuing a citation to a person who violates this
31 subdivision shall provide written notice to the person that if eligible, the
32 person may ~~attend defensive driving school~~ PAY A COURT DIVERSION FEE or, if
33 not eligible or if the person chooses not to ~~attend defensive driving school~~
34 PAY THE COURT DIVERSION FEE and is ~~convicted~~ FOUND RESPONSIBLE or enters a
35 plea of responsible for a violation of this subsection, the person must
36 attend and successfully complete traffic survival school training and
37 educational sessions. The notice shall include a reference to red light
38 violations and state that if the person is required to attend traffic
39 survival school the person will receive notice from the motor vehicle
40 division.

41 (b) The driver of a vehicle that is stopped in obedience to a red
42 signal and as close as practicable at the entrance to the crosswalk on the
43 near side of the intersection, or if there is no crosswalk, then at the
44 entrance to the intersection, may make a right turn but shall yield the
45 right-of-way to pedestrians and other traffic proceeding as directed by the

1 signal. A right turn may be prohibited against a red signal at any
2 intersection if a sign prohibiting the turn is erected at the intersection.

3 (c) The driver of a vehicle on a one-way street that intersects
4 another one-way street on which traffic moves to the left shall stop in
5 obedience to a red signal but may then make a left turn into the one-way
6 street. The driver shall yield the right-of-way to pedestrians and other
7 traffic proceeding as directed by the signal at the intersection, except that
8 such left turn may be prohibited if a sign prohibiting the turn is erected at
9 the intersection.

10 (d) Unless otherwise directed by a pedestrian control signal as
11 provided in section 28-646, a pedestrian facing a steady red signal alone
12 shall not enter the roadway.

13 B. If an official traffic control signal is erected and maintained at
14 a place other than an intersection, this section applies except as to those
15 provisions of this section that by their nature can have no application. Any
16 stop required shall be made at a sign or marking on the pavement indicating
17 where the stop shall be made, but in the absence of a sign or marking the
18 stop shall be made at the signal.

19 C. The driver of a vehicle approaching an intersection that has an
20 official traffic control signal that is inoperative shall bring the vehicle
21 to a complete stop before entering the intersection and may proceed with
22 caution only when it is safe to do so. If two or more vehicles approach an
23 intersection from different streets or highways at approximately the same
24 time and the official traffic control signal for the intersection is
25 inoperative, the driver of each vehicle shall bring the vehicle to a complete
26 stop before entering the intersection and the driver of the vehicle on the
27 left shall yield the right-of-way to the driver of the vehicle on the right.

28 Sec. 4. Section 28-647, Arizona Revised Statutes, is amended to read:
29 28-647. Flashing signals

30 If an illuminated flashing red or yellow signal is used in a traffic
31 sign or signal it requires obedience by vehicular traffic as follows:

32 1. Flashing red stop signal. If a red lens is illuminated with rapid
33 intermittent flashes, drivers of vehicles shall stop before entering the
34 nearest crosswalk at an intersection or at a limit line if marked, or if
35 none, then before entering the intersection, and the right to proceed is
36 subject to the rules applicable after making a stop at a stop sign. On
37 receipt of a record of judgment for a violation of this paragraph, the
38 department shall order the person to attend and successfully complete traffic
39 survival school training and educational sessions within sixty days after the
40 department issues the order. Notwithstanding section 28-3315, if the person
41 fails to attend or successfully complete traffic survival school training and
42 educational sessions, the department shall suspend the person's driving
43 privilege pursuant to section 28-3306 until the person attends and
44 successfully completes traffic survival school training and educational
45 sessions. A person whose driving privilege is suspended pursuant to this

1 paragraph may request a hearing. If the person requests a hearing, the
2 department shall conduct the hearing as prescribed in section 28-3306. A law
3 enforcement officer or a jurisdiction issuing a citation to a person who
4 violates this paragraph shall provide written notice to the person that if
5 eligible, the person may ~~attend defensive driving school~~ PAY A COURT
6 DIVERSION FEE or, if not eligible or if the person chooses not to ~~attend~~
7 ~~defensive driving school~~ PAY THE COURT DIVERSION FEE and is ~~convicted~~ FOUND
8 RESPONSIBLE or enters a plea of responsible for a violation of this
9 paragraph, the person must attend and successfully complete traffic survival
10 school training and educational sessions. The notice shall include a
11 reference to red light violations and state that if the person is required to
12 attend traffic survival school the person will receive notice from the motor
13 vehicle division.

14 2. Flashing yellow caution signal. If a yellow lens is illuminated
15 with rapid intermittent flashes, drivers of vehicles may proceed through the
16 intersection or past the signal only with caution.

17 Sec. 5. Section 28-775, Arizona Revised Statutes, is amended to read:
18 28-775. Authorized emergency vehicles; approaching; following
19 fire apparatus; driver license examinations

20 A. Except when otherwise directed by a police officer, on the
21 immediate approach of an authorized emergency vehicle THAT IS equipped with
22 at least one lighted lamp exhibiting a red or red and blue light or lens
23 visible under normal atmospheric conditions from a distance of five hundred
24 feet to the front of the vehicle and that is giving an audible signal by
25 siren, exhaust whistle or bell, the driver of another vehicle shall:

26 1. Yield the right-of-way.

27 2. Immediately drive to a position parallel to and as close as
28 possible to the right-hand edge or curb of the roadway clear of any
29 intersection.

30 3. Stop and remain in the position prescribed in paragraph 2 of this
31 subsection until the authorized emergency vehicle has passed.

32 B. An authorized emergency vehicle being operated with activated
33 emergency lights and siren is exempt from the requirements of this section.

34 C. The driver of a vehicle other than one on official business shall
35 not follow any fire apparatus traveling in response to a fire alarm closer
36 than five hundred feet or drive into or park the vehicle within the block
37 where fire apparatus has stopped in answer to a fire alarm.

38 D. When a police vehicle is giving a visual signal with at least one
39 lighted red or red and blue light or lens and is giving an audible signal by
40 siren, the driver of another vehicle:

41 1. Shall not approach or drive parallel to the police vehicle.

42 2. Shall maintain a distance of at least three hundred feet behind any
43 police vehicle involved in an emergency until the police vehicle moves to the
44 lane closest to the right-hand edge or curb of the roadway.

1 E. If a person who drives a vehicle approaches a stationary authorized
 2 emergency vehicle and the authorized emergency vehicle is giving a signal by
 3 displaying alternately flashing red or red and blue lights, the person shall
 4 do either of the following:

5 1. If on a highway having at least four lanes with at least two lanes
 6 proceeding in the same direction as the approaching vehicle, proceed with due
 7 caution and if possible, with due regard to safety and traffic conditions,
 8 yield the right-of-way by making a lane change into a lane not adjacent to
 9 that of the authorized emergency vehicle.

10 2. If changing lanes would be impossible or unsafe, proceed with due
 11 caution and reduce the speed of the vehicle, maintaining a safe speed for
 12 road conditions.

13 F. This section does not relieve the driver of an authorized emergency
 14 vehicle from the duty to drive with due regard for the safety of all persons
 15 using the highway.

16 G. ~~Defensive driving school courses that are offered by defensive~~
 17 ~~driving schools operated pursuant to chapter 8, article 7 of this title may~~
 18 ~~include educational information relating to subsections D and E.~~ The
 19 department may include information relating to subsections D and E in any of
 20 the department's examination, information or education material.

21 Sec. 6. Heading change

22 The article heading of title 28, chapter 8, article 7, Arizona Revised
 23 Statutes, is changed from "DEFENSIVE DRIVING SCHOOL" to "COURT DIVERSION
 24 FEES".

25 Sec. 7. Section 28-3392, Arizona Revised Statutes, is amended to read:

26 28-3392. Court diversion fee: eligibility

27 A. A court~~;~~

28 ~~1.~~ shall allow an individual who is issued a citation for a civil
 29 traffic moving violation pursuant to chapter 3, articles 2, 3, 4 and 6
 30 through 15 of this title or a local civil traffic ordinance relating to the
 31 same subject matter to ~~attend a defensive driving school~~ PAY A COURT
 32 DIVERSION FEE for the purposes provided in this article.

33 ~~2. Except as prescribed in subsection C of this section, may allow an~~
 34 ~~individual who is issued a citation for a violation of section 28-701.02 to~~
 35 ~~attend a defensive driving school.~~

36 B. A person who ~~attends a defensive driving school~~ PAYS A COURT
 37 DIVERSION FEE pursuant to this article is not eligible to ~~attend a defensive~~
 38 ~~driving school~~ PAY A COURT DIVERSION FEE again within twenty-four months from
 39 the day of the last violation for which the person was authorized by this
 40 article to ~~attend a defensive driving school~~ PAY A COURT DIVERSION FEE.

41 C. Notwithstanding subsection A of this section:

42 1. An individual who commits a civil or criminal traffic violation
 43 resulting in death or serious physical injury is not eligible to ~~attend a~~
 44 ~~defensive driving school, except that the court may order the individual to~~
 45 ~~attend a defensive driving school in addition to another sentence imposed by~~

~~the court on an adjudication or admission of the traffic violation~~ PAY A COURT DIVERSION FEE PURSUANT TO THIS ARTICLE.

~~2. If a commercial driver license holder is found guilty or responsible for a moving violation, the court may require the violator to attend defensive driving school as an element of sentence, but may not dismiss the conviction or finding of responsibility and shall report the conviction or finding of responsibility to the department as prescribed in section 28-1559.~~ A commercial driver license holder is not eligible ~~for the defensive driving~~ TO PAY A COURT diversion program FEE PURSUANT TO THIS ARTICLE.

Sec. 8. Repeal

A. Section 28-3393, Arizona Revised Statutes, as amended by Laws 1997, chapter 1, section 217, is repealed.

B. Section 28-3393, Arizona Revised Statutes, as amended by Laws 2007, chapter 182, section 1, is repealed.

Sec. 9. Section 28-3394, Arizona Revised Statutes, is amended to read:

28-3394. Successful court petition; payment of court diversion fee

A. If an eligible individual successfully ~~completes the course at a defensive driving school~~ PETITIONS THE COURT AND PAYS THE COURT DIVERSION FEE:

1. The court shall dismiss the civil ~~or criminal~~ traffic citation for which the individual ~~attended the school~~ PAID THE COURT DIVERSION FEE.

2. The department shall not include a record of the civil ~~or criminal~~ traffic citation for which the individual ~~attended the school~~ PAID THE COURT DIVERSION FEE on the individual's driving record.

B. The dismissal of a civil ~~or criminal~~ traffic citation pursuant to this section does not preclude the introduction of evidence pertaining to the issuance of the citation in a civil or criminal proceeding.

Sec. 10. Section 28-3395, Arizona Revised Statutes, is amended to read:

28-3395. Supreme court authority and duties; rules; record

A. The supreme court may contract with a public or private agency ~~that does not provide defensive driving schools in this state pursuant to this article~~ to provide assistance in carrying out the duties of this article.

B. The supreme court shall:

~~1. Supervise the use of defensive driving schools by the courts in this state.~~

~~2. 1. Make public the amount of the court diversion fee assessed by each court in this state pursuant to this article and the total cost to attend a defensive driving school in each court.~~

~~3. 2. Establish an automated statewide database for keeping a record of persons who attend a defensive driving school~~ PAY A COURT DIVERSION FEE.

~~4. Adopt rules that establish criteria for the certification of qualified defensive driving schools and instructors used by the courts.~~

1 ~~5.~~ 3. Establish procedures for courts ~~and schools~~ to remit reports
2 that are required by the supreme court.

3 ~~6. Certify and monitor defensive driving schools and instructors that~~
4 ~~serve as a court authorized diversion program.~~

5 ~~7. Require that a defensive driving school class not exceed a total of~~
6 ~~four and one half hours, including any testing, reviewing and grading related~~
7 ~~to the defensive driving school class.~~

8 4. ADOPT RULES SPECIFYING HOW A PERSON MAY PETITION THE COURT TO
9 PARTICIPATE IN THE COURT DIVERSION FEE PROGRAM ESTABLISHED BY THIS ARTICLE
10 AND OTHER RULES NECESSARY TO IMPLEMENT THIS ARTICLE.

11 C. The information contained in the database required by this section
12 is not a public record.

13 Sec. 11. Section 28-3396, Arizona Revised Statutes, is amended to
14 read:

15 28-3396. Court diversion fee

16 A. The presiding judge of each court shall:

17 1. Set the amount of the court diversion fee that an ELIGIBLE
18 individual ~~who attends a defensive driving school~~ may be assessed.

19 2. Immediately inform the supreme court in writing of the amount of
20 the court diversion fee that is established for the court ~~and the total cost~~
21 ~~to attend a defensive driving school.~~

22 3. Immediately inform the supreme court in writing of any changes in
23 the ~~total cost to attend a defensive driving school~~ COURT DIVERSION FEE.

24 B. Payment of the court diversion fee is in lieu of payment of a civil
25 penalty ~~or criminal fine~~ that is imposed for a traffic violation.

26 ~~C. The driving school shall collect the court diversion fee before or~~
27 ~~at the time an individual attends the school. On receipt of the diversion~~
28 ~~fee, the defensive driving school shall transmit the fee promptly to the~~
29 ~~appropriate court pursuant to procedures prescribed by the supreme court.~~

30 C. THE COURT THAT RECEIVES THE MONIES FROM THE COURT DIVERSION FEE
31 SHALL DEPOSIT THE MONIES IN THE COURT DIVERSION FEE FUND ESTABLISHED BY
32 SECTION 28-3399.

33 Sec. 12. Section 28-3397, Arizona Revised Statutes, is amended to
34 read:

35 28-3397. Additional fees; disposition

36 A. In addition to the court diversion fee ~~and the fee for the cost to~~
37 ~~attend a defensive driving school~~, a person who ~~attends a defensive driving~~
38 ~~school~~ PAYS A COURT DIVERSION FEE pursuant to this article ~~or by a court~~
39 ~~order~~ shall pay a fee of not more than fifteen dollars that is established by
40 the supreme court.

41 ~~B. Before or at the time an individual attends a defensive driving~~
42 ~~school, the school shall collect the defensive driving school fund fee~~
43 ~~established pursuant to this section and the fee, if any, charged by the~~
44 ~~defensive driving school for the course.~~

1 ~~C. B. The defensive driving school shall transmit the fee established~~
2 ~~by the supreme court pursuant to this section to the supreme court.~~ The
3 supreme court shall deposit the fee in the ~~defensive driving school~~ COURT
4 OPERATIONS fund established by section 28-3398 pursuant to procedures
5 established by the supreme court.

6 Sec. 13. Section 28-3398, Arizona Revised Statutes, is amended to
7 read:

8 28-3398. Court operations fund

9 A. A ~~defensive driving school~~ COURT OPERATIONS fund is established
10 consisting of monies collected for the fee established by the supreme court
11 pursuant to section 28-3397.

12 B. The monies in the fund shall be used, subject to legislative
13 appropriation, to ~~supervise the use of defensive driving schools by the~~
14 ~~courts in this state and to~~ expedite the processing of all offenses
15 prescribed in chapters 3 and 4 of this title.

16 C. The fund established in this section is not subject to reversion.
17 On notice from the supreme court, the state treasurer shall invest and divest
18 monies in the fund as provided by section 35-313, and monies earned from
19 investment shall be credited to the fund.

20 Sec. 14. Repeal

21 Section 28-3399, Arizona Revised Statutes, is repealed.

22 Sec. 15. Title 28, chapter 8, article 7, Arizona Revised Statutes, is
23 amended by adding a new section 28-3399, to read:

24 28-3399. Court diversion fee fund

25 A. THE COURT DIVERSION FEE FUND IS ESTABLISHED CONSISTING OF THE COURT
26 DIVERSION FEES RECEIVED BY THE COURTS PURSUANT TO THIS ARTICLE. THE SUPREME
27 COURT SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE CONTINUOUSLY
28 APPROPRIATED.

29 B. THE SUPREME COURT SHALL DISTRIBUTE MONIES IN THE FUND TO THE COURT
30 THAT DEPOSITED THE MONIES PURSUANT TO SECTION 28-3396 FOR THE PURPOSES OF
31 PAYING FOR BUILDING CRITICAL INFRASTRUCTURE OF THE COURTS. THE PRESIDING
32 JUSTICE OF THE PEACE OF EACH COUNTY AND THE PRESIDING MUNICIPAL JUDGE OF EACH
33 MUNICIPALITY SHALL DISTRIBUTE MONIES FOR THE BUILDING OF THE CRITICAL
34 INFRASTRUCTURE IN THOSE COURTS.